



29 MAY 2003

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In re Application of	:	
SILVA	:	
Application No.: 09/214,349	:	DECISION
PCT No.: PCT/EP97/03550	:	
Int. Filing Date: 04 July 1997	:	
Priority Date: 04 July 1996	:	
Attorney Docket No.: FA/151	:	
For: WATERPROOF FOOTWEAR	:	

This decision is in response to applicant's submission filed 04 August 1999 and applicant's "PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION FOR PATENT PURSUANT TO 37 C.F.R. 1.137(b)" filed 10 December 2002.

### **BACKGROUND**

On 04 July 1997, applicant filed international application PCT/EP97/03550, which claimed a priority date of 04 July 1996. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 15 January 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 26 January 1998, which was within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 January 1999.

On 30 December 1998, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 02 July 1999, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the earliest priority date were required. The NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 was accompanied by a NOTICE OF DEFECTIVE TRANSLATION (Form PCT/DO/EO/913) which indicated that the "specification does not match [the] international application."

On 04 August 1999, applicant filed a submission which included a "LETTER OF TRANSMITTAL", a copy of the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 02 July 1999, and a declaration of the inventor. The Transmittal Letter filed 04 August 1999 indicates the application number as 09/214,347. Accordingly, the submission filed 04 August 1999 is being treated as a petition under 37 CFR 1.182 to correct the identification of the application number in the Transmittal Letter. The \$130 petition fee has been charged to applicants' Deposit Account No. 07-1729.

On 04 February 2000, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 02 July 1999.

On 10 December 2002, applicant submitted the instant "PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION FOR PATENT PURSUANT TO 37 C.F.R. 1.137(b)."

### **DISCUSSION**

#### **Petition Under 37 CFR 1.182**

The Transmittal Letter filed 04 August 1999 indicates the application number as 09/214,347. However, the title and inventor indicated on the Transmittal Letter do not correspond to 09/214,347. A review of the application file and the papers accompanying the Transmittal Letter, as well as a review of the USPTO file for 09/214,347, reveals that the indication of application 09/214,247 was incorrect. The application number on the Transmittal Letter should have read 09/214,349. Accordingly, the NOTIFICATION OF ABANDONMENT mailed 04 February 2000 is hereby VACATED.

#### **Petition Under 37 CFR 1.137(b)**

Applicant timely responded to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 02 July 1999 with the submission filed on 04 August 1999. The declaration of the inventor filed 04 August 1999 is in compliance with 37 CFR 1.497(a)-(b). The surcharge under 37 CFR 1.492(e) has been charged to Deposit Account 07-1729. Accordingly, the "PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION FOR PATENT PURSUANT TO 37 C.F.R. 1.137(b)." filed 10 December 2002 is MOOT. The petition fee of \$1,280 will be credited to Deposit Account 07-1729.

#### **NOTICE OF DEFECTIVE TRANSLATION**

The NOTICE OF DEFECTIVE TRANSLATION mailed along with the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 on 02 July 1999 was sent in error. The international application was published in English. Accordingly, the NOTICE OF DEFECTIVE TRANSLATION is hereby VACATED.

**CONCLUSION**

The petition under 37 CFR 1.182 is **GRANTED** for the reasons set forth above.

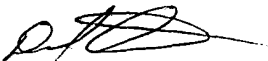
The petition under 37 CFR 1.137(b) to revive is **DISMISSED** as **MOOT** for the reasons set forth above.

The NOTICE OF DEFECTIVE TRANSLATION mailed 02 July 1999 is **VACATED** for the reasons set forth above.

The NOTIFICATION OF ABANDONMENT mailed 04 February 2002 is **VACATED** for the reasons set forth above.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision.



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